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SUBJECT: TURKISH OPPOSITION APPEALS TO COURT TO ANNUL THE NUCLEAR  
POWER LAW

REF: ANKARA 2755

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1. (SBU) SUMMARY: The opposition Republican People's Party (CHP) and Democratic Left Party (DSP) asked the Constitutional Court on December 6 to annul the recently passed Nuclear Power Law. They assert that the law is unconstitutional because it usurps parliamentary authority, violates the "greater public good" by making the Turkish public bear some dismantling costs, and fails to set personnel qualifications. CHP Deputy Faik Oztrak expects the court to halt the February 21 tender process, while GOT energy advisor Faruk Demir said these were old issues that already had been addressed. The challenge may succeed because the law is vague, especially on the tender process. It illustrates why the government wants to amend the constitution to remove "public good" legal standards that it says impede needed economic reforms. End Summary.

2. (SBU) The main opposition party CHP and DSP jointly asked the Constitutional Court on December 6 to annul the Nuclear Power Law passed on November 9 (reftel). They challenge the constitutionality of articles 3, 7 and temporary article 1 of the law, which deal with the tender process and selection criteria; Treasury liabilities for the Decommissioning Account; and the definition of the qualifications of personnel, respectively.

3. (SBU) The two parties argue that the law is unconstitutional because it circumvents the Legislature's regulatory power and leaves too many critical issues to the Government's discretion. For example, the Nuclear Power Law allows the Turkish Atomic Energy Agency (TAEK) to decide the principles for setting technical criteria. It also does not define the criteria for selection of the contractor and plant location, licensing costs, infrastructure-related incentives, terms of fuel supply and production capacity.

4. (SBU) They also object to the provision that requires the government to pay for dismantling cost overruns (the government's liability is limited to 25% of the amount accumulated in the Dismantling Account). They claim this article does not serve the "greater public good," a constitutional requirement for all legislation. Their third objection is to vague personnel qualifications set by the law, which the parties say violates the constitutional "principle of certainty."

5. (SBU) The GOT and the opposition parties who filed the action gave predictably opposing analyses of how effective this court challenge might be. CHP Deputy Faik Oztrak told us he expected the Constitutional Court to prevent the GOT from moving forward with the

tender process on February 21, based on its mandate to protect the public good. Oztrak added that CHP was particularly concerned about how investors would handle nuclear waste management, given the lack of guidance or expertise in Turkey on this issue. However, Faruk Demir, an independent adviser to the Energy Minister, dismissed the action as purely political. He said "the greater public good" argument was made by former President Sezer when he vetoed a prior version of the law, and the GOT addressed this when it amended the law in line with Sezer's veto.

[¶6](#). (SBU) Comment: This challenge may succeed because the government pushed the Nuclear Power Law through the parliament in just two days without amendment, and it remains vague on several issues, particularly on the tender process, which was a focus of opposition complaints when the law was debated in parliament. This is one of several lawsuits that CHP has filed against the government, and illustrates why the government wants to amend the constitution to remove vague, "public good" legal standards that it says impede needed economic reforms. End Comment.

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